

SERVED: August 28, 1992

NTSB Order No. EA-3661

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 13th day of August, 1992

THOMAS C. RICHARDS,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-9788
v.)	
)	
GEORGE MORRONE,)	
)	
Respondent.)	
)	

OPINION AND ORDER

The Administrator has appealed from the oral initial decision of Administrative Law Judge Joyce Capps, issued on April 24, 1990, following an evidentiary hearing.¹ We grant the appeal.

The Administrator charged, and the law judge found, that respondent violated Federal Aviation Regulation ("FAR")

¹The initial decision, an excerpt from the hearing transcript, is attached.

§ 43.15(a)(1) (14 C.F.R. Part 43) in certifying an annual inspection performed by another, despite numerous discrepancies.²

Although the Administrator sought revocation of respondent's inspection authorization, the law judge reduced the sanction to an 8-month suspension. It is this action the Administrator appeals, arguing that it is inconsistent with Administrator v. Muzquiz, 2 NTSB 1474 (1975). We agree, and will reinstate the revocation order.

Muzquiz states, in part:

[I]n those cases in which all of the violations are affirmed, we believe it is incumbent on the law judge to offer clear and compelling reasons for reducing the sanction.

Id. at 1477. The Administrator argues that, in this case, all the violations alleged (one) were affirmed, and no clear and compelling reasons were offered by the law judge when she reduced the sanction.

Respondent replies, citing Administrator v. Pearson, 3 NTSB 3837, 3838 (1981), that Muzquiz only applies when the Administrator has proven all the "charges." Respondent interprets "charges" to mean all the varied factual allegations in the Administrator's order. Respondent notes that in this case the Administrator failed to prove all his factual allegations. See Tr. at 123.

²The law judge found (Tr. at 124-125) that the discrepancies resulted in an unairworthy aircraft.

Muzquiz is a modification of the general rule under which the law judge may mitigate the sanction based on the totality of the circumstances,³ and applies, as noted above, only in a certain set of circumstances. Although Pearson (and perhaps other cases) used the word "charges" in place of Muzquiz's "violations," our intent has been clear and did not change. We have intended to apply and have applied the Muzquiz standard when the Administrator has proven that respondent violated the cited regulations.⁴ Thus, use of the word "charges" in place of "violations" produced no change in meaning.

Moreover, if respondent's interpretation were adopted and "charges" read to mean "factual allegations," the Administrator's failure to prove insignificant or minor details stated in the order could mitigate the sanction, regardless of the seriousness of the proven offense(s). That result clearly is inconsistent with rational enforcement of the aviation safety regulations.

Having concluded that Muzquiz applies, we further find that the law judge did not present clear and compelling reasons for reducing the sanction. She cited no cases to support sanction reduction based on inconsistency with precedent. See Pearson, supra. And, to the contrary, the Administrator has cited a

³Respondent cites Administrator v. Jones, NTSB Order EA-3154 (1990), for this proposition.

⁴See, e.g., Administrator v. Dickinson, 5 NTSB 235 (1985); Administrator v. Dibble, 5 NTSB 352 (1985); Administrator v. Brown, 5 NTSB 478 (1985); Administrator v. Van de Hoef, 5 NTSB 1050 (1986).

number of cases in which revocation was ordered for violation of § 43.15(a)(1). The law judge's statement that she "has had other cases that were much more severe . . . and only warranted suspension,"⁵ does not constitute clear and compelling reasons. Moreover, we cannot find, and neither the law judge nor respondent identified, any mitigating circumstances that would warrant a sanction reduction.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted; and
2. The revocation of respondent's inspection authorization shall begin 30 days from the date of service of this order.⁶

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁵Tr. at 10.

⁶For the purposes of this order, respondent must physically surrender his inspection authorization to an appropriate representative of the FAA pursuant to FAR § 61.19(f).